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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/537,352	10/31/2005	Jan-Erik Pettersson	PETT3003/REF	2656
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EXAMINER

MCCORMICK, MELENIE LEE

ART UNIT

PAPER NUMBER

1655

DATE MAILED: 05/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/537,352	Applicant(s) PETTERSSON, JAN-ERIK	
	Examiner Melenie Alonis	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-15 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>05/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claims 1-15 are presented for examination on the merits.

Claim Objections

Claims 4-15 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another multiple dependent claim. See MPEP § 608.01(n).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petrus (US 5,965,137) and Hori (Appl. Entomol. Zool.).

A composition for controlling a plant-pest population comprising 1,8-cineole, menthol and methyl salicylate is claimed, as is a method for controlling plant-pest populations therewith. Dependent claims further disclose that the composition comprises eucalyptus oil as a source for 1,8-cineole, peppermint oil as a source for menthol and wintergreen oil as a source for methyl salicylate.

Petrus beneficially teaches examples of insect repellent compounds that are essential oils, including, eucalyptus oil, peppermint oil, menthol (spearmint oil) and wintergreen oil (see e.g. col 2 lines 50-62). Petrus further beneficially teaches active

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ingredients in essential oils, including methyl salicylate (see e.g., col 2, lines 54-64).

Petrus further discloses that many commercial insect repellents use eucalyptus oil or various essential oil blends (see e.g. col 3, lines 22-23). Petrus also beneficially teaches a pest repelling composition containing eucalyptus oil which can be in the form of a spray (see e.g. col 5 lines 23-26). Please note that nothing would prevent one from applying such a spray to a plant. Petrus does not explicitly teach the use of these essential oils in controlling aphid plant pests.

Hori beneficially teaches the pest repellent ability of the essential oils spearmint and peppermint (see e.g., p.117 fourth para). Hori further beneficially teaches that these oils are useful for repelling aphids (see e.g. p. 118 last para). Hori also discloses that the composition containing the essential oil is applied to a cotton pad (see e.g. pgs 113-114) (this reads on an article of manufacture impregnated with the pest controlling composition instantly claimed).

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the various essential oils taught by both Petrus and Hori to obtain a pest repellent composition as instantly claimed based upon the beneficial teachings therein, as discussed above. Given the beneficial teachings of Petrus concerning the insect repellent ability of eucalyptus (which intrinsically contains 1,8-cineole-as referenced by Petrus col 5, lines 45-46) as well as Petrus' disclosure of the insect repellent ability of menthol and peppermint oil (which intrinsically contains menthol-as referenced by wikipedia.org/wiki/peppermint_oil) and wintergreen (which intrinsically contains methyl salicylate-as referenced by

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wikipedia.org/wiki/Methyl_salicylate), it would have been obvious to combine the instantly claimed/disclosed oils for the purpose of obtaining a composition which had such an aphid repelling ability as that disclosed by Hori. One would have been motivated to use this composition in the manner instantly claimed, given the beneficial teachings of Hori which demonstrate the success of peppermint oil (which inherently contains menthol) and spearmint oil (which inherently contains both 1,8-cineole and menthol-as referenced by remedyfind.com) in repelling aphids. The adjustment of particular conventional working conditions (e.g. using the composition for controlling particular species of aphids or dispersing the composition in a particular manner to repel the plant pest) is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Conclusion

No claim is allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melenie Alonis whose telephone number is (571) 272-8037. The examiner can normally be reached on M-F 7:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHRISTOPHER R. TATE
PRIMARY EXAMINER